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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

LINDQVIST et al

Atty. Ref.: 117-357; Confirmation No. 2109

Appl. No. 09/331,808

TC/A.U. 1639

Filed: January 27, 2000

Examiner: Wessendorf, T.

For: IN VITRO PEPTIDE OR PROTEIN EXPRESSION LIBRARY

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January 14, 2008

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

REFUND REQUEST/PETITION FOR REFUND OF FEE PAID

It is hereby requested that the RCE fee paid October 22, 2007 be refunded by crediting \$405.00 to the undersigned firm's deposit account (Account No. 14-1140, Order No. 117-357).

The refund is requested for the reasons that follow.

In item 2 on page 1 of the Office Action dated April 20, 2007, the Examiner indicated the Action was a Final Rejection. PAIR also indicated the Action was a Final Rejection (see attached). Upon receipt and review of the Action, the undersigned endeavored to reach the Examiner by phone but was required to leave a voice mail message requesting issuance of a new Action because: i) the Action was marked "final" on its face but should have been marked "non-final" in view of the new ground of rejection not necessitated by the prior Amendment, and ii) the Action made no reference to the Supplemental Amendment filed February 1, 2007. When

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the undersigned subsequently spoke with the Examiner, the Examiner refused to issue a new Action but acknowledged that the Action should have been marked "non-final". Further, the Examiner acknowledged receipt and entry of the Supplemental Amendment.

Despite the above verbal acknowledgments, the Examiner did not issue any communication addressing the errors noted above prior to Applicants' filing of a responsive Amendment on October 22, 2007. Since Applicants had no choice but to rely on the written record, that Amendment was filed under Rule 116 and with an RCE. On page 6 of the Amendment, Applicants requested the Examiner to take the steps necessary to ensure that the RCE fee was refunded to the undersigned firm's deposit account once the Examiner formally corrected the record as regards the non-finality of the April 20, 2007 Action.

The Examiner has now corrected the record by acknowledging in the Summary of the May 1, 2007 and December 3, 2007 interviews that the April 20, 2007 Action was non-final. The Examiner also advised Applicants in that Summary that Applicants would have to file a petition requesting a refund of the RCE fee. It is requested that this paper be so treated.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By:



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